

EXHIBIT 6

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February 14, 2019

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED PATENTS INC.,)
Petitioner)
v.) Case IPR2018-00043
FALL LINE PATENTS, LLC,) Patent 9,454,748
Patent Owner.)

- - - - -

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

DEPOSITION OF
KEVIN JAKEL

Thursday, February 14, 2019

Reported by: Lori J. Goodin, RPR, CLR, CRR, RSA
California CSR #13959
Assignment No. 261625

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IPR2018-00043
Fall Line EX2009

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3 The deposition of KEVIN JAKEL was
4 convened on Thursday, February 14, 2019,
5 commencing at 8:46 a.m., at the offices of

6
7 HAYES and BOONE, LLP
8 800 17th Street, Northwest
9 Washington, D.C. 20006

10
11 before Lori J. Goodin, Registered Professional
12 Reporter, Certified LiveNote Reporter, Certified
13 Realtime Reporter, Realtime Systems Administrator,
14 California CSR #13959, and Notary Public in and
15 for the District of Columbia.
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EXHIBITS

None marked

PRIOR MARKED EXHIBITS

FIRST REFERRAL

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PROCEEDINGS

* * *

KEVIN JAKEL,

a witness called for examination, having been
first duly sworn, testified as follows:

* * *

EXAMINATION

BY MR. ANTONELLI:

Q. Let's start by just having you state
your name and where you live for the record.

A. Kevin Jakel, I live in Bethesda,
Maryland.

Q. Okay. And, you are an attorney; is
that right?

A. I am.

Q. And how long have you been an
attorney?

A. 2004, I believe.

Q. You have also had your deposition
taken a number of times?

A. I have.

Q. How many times?

A. Seven, eight.

Q. And is that all in connection with
your work for Unified Patents?

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1 BY MR. ANTONELLI:

2 Q. Okay. Let me just get a little bit
3 of your background. If you would just tell me
4 about your career before you started at Unified
5 Patents.

6 A. So, I started out as an engineer a
7 long time ago. Built satellites with the
8 government. And then I decided to go to law
9 school. Moved to D.C., went to work at the
10 Patent Office for about two years.

11 And then I moved to Howrey, and I
12 went to law school at night and did patent
13 prosecution for Howrey during the day.

14 Then I graduated from law school,
15 did prosecution and litigation work at Howrey for
16 a couple of years and then moved to Kay Scholer.
17 I was at Kay Scholer for five years. Almost
18 entirely litigation work at Kaye Scholer.

19 Then moved to Intuit and was head of
20 IP litigation at Intuit for a few years before
21 leaving Intuit and founding Unified.

22 Q. What year did you leave Intuit and
23 found Unified?

24 A. 2012.

25 Q. Whose idea was it to found Unified?

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1 Q. Is that including benefits?

2 A. I don't think so. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 And then benefits, [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. So, do you have an idea all in what
10 your total is for salaries and benefits, those
11 expenses?

12 [REDACTED]

13 [REDACTED]

14 Q. What other expenses does Unified
15 have?

16 A. Rent, travel, a whole bunch of
17 stuff. Meals and conferences and, you know, all
18 of that good stuff.

19 Q. What about outside counsel? Is that
20 a big expense for Unified?

21 A. Outside counsel is probably, is our
22 biggest expense in terms of like, if you are
23 talking about, I thought you were kind of talking
24 about the company and stuff.

25 But, yes. So, in doing our

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1 deterrence work that we do for the zones that we
2 work for, outside counsel is our single biggest
3 expense.

4 Q. How big is your outside counsel
5 expense?

6 A. [REDACTED] a
7 year.

8 Q. And those are going to, say for
9 example, the attorneys that are filing and
10 prosecuting the IPRs in front of the patent
11 office?

12 A. That is a big, that is the big part
13 of the outside counsel expense. And there are a
14 few other things that people do as well, but.

15 Q. Anything else significant you want
16 to mention other than the IPRs?

17 A. Well, it is, we don't all, I mean we
18 pay them and they don't always need to file an
19 IPRs, final research, validity, everything, we do
20 all of that doesn't always end up in IPRs.

21 But, the IPRs are the biggest
22 expense.

23 Q. So, also some work that kind of
24 investigating for potential IPRs then it may not
25 turn out to be an IPR?

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1 any kind of ballpark idea what that eats up every
2 year?

3

4 Q. Meals, conferences you mentioned?

5 A. I have no idea. [REDACTED]

6 [REDACTED] I'm just throwing numbers out.

7 Q. Any other bigger ticket items that
8 you can think of that make up part of the expense
9 structure of Unified that you haven't mentioned
10 yet?

11 A. Sure, I mean, I don't know. Not off
12 the top of my head.

13 Q. So, we have gone over all of the big
14 ones that are obvious?

15 A. As far as I can remember right now.

16 Q. Okay. So, I guess we will stick
17 with 2017 because that was the one that you were
18 comfortable talking about with about [REDACTED]
19 in revenue.

20 Where did that revenue come from?

21 A. That revenue would have come from
22 all of our membership fees.

23 So, each of the zones has
24 memberships; people pay to participate in a zone.
25 And the amount that they pay us goes into, if you

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1 add it all up, it is somewhere around [REDACTED]

2 Q. Okay.

3 A. The, there is some additional
4 revenue that comes in from conferences.

5 So, we run conferences throughout
6 the year and I think brought in like [REDACTED] on
7 conferences. And then we also have some revenue
8 from what we are calling our standard essential
9 patent zones in 2017.

10 Those made up, those made up another

11 [REDACTED]
12 And actually I, that is probably
13 where the extra expenses went on 2017 is we spent
14 a bunch of money doing landscape analysis and
15 building a machine running algorithm to identify
16 standard essential patents and a whole bunch of
17 work on standard essential landscaping stuff.

18 Q. Was that done in-house or with
19 outside counsel?

20 A. That was done mostly in-house and
21 working with other third party, like landscaping,
22 like search, search firms.

23 Q. Sure. Okay. Any other source of
24 revenue than the ones that you have just
25 mentioned?

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1 A. No.

2 Q. So, something like [REDACTED] of it
3 at least is from what you have called membership
4 fees?

5 A. Yes.

6 Q. Okay. And, to be clear, I want to
7 make sure I'm using the right terminology. That
8 is how you referred to it within Unified Patents.
9 These fees are called membership fees?

10 A. Yes, membership fees, subscription
11 fees.

12 Q. Sometimes you refer to then as
13 subscription fees?

14 A. Yes.

15 Q. And then the people that you get
16 these fees from, you call them members or
17 subscribers?

18 A. Yes.

19 Q. You use both terminology within
20 Unified?

21 A. Yes, I mean subscribers, not so much
22 subscribers. But, members are what we kind of
23 refer to, to people who participate.

24 Subscription fees is what the
25 agreement, the membership agreement refers to as

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1 got to pay for them unless you figure out how to
2 cancel it?

3 A. Yes, it doesn't work like that.

4 Q. What does Unified promise to do for
5 its members in its membership agreements?

6 MR. BOWSER: Objection.

7 THE WITNESS: Well, so, Unified has
8 a membership agreement where we say that we
9 are going to go and use the [REDACTED]
10 [REDACTED] to generate a deterrence impact on
11 behalf of a zone.

12 BY MR. ANTONELLI:

13 Q. So, that is the contractual promise
14 that Unified makes to its members in return for
15 the membership fees it receives from its members?

16 A. Yes.

17 Q. Does Unified promise to its members
18 that it will, in some general way file re-exams
19 or IPRs?

20 A. The membership agreement has a list
21 of some, not -- some options that Unified may
22 take advantage of.

23 It is a list of, I don't know, ten
24 things. One of the items on the list is that we
25 would challenge patents. Doesn't specifically

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1 say that we were going to use IPRs, whether we
2 were going to file re-exams or any other form of
3 challenge.

4 And so that is one of the options
5 that Unified has to take advantage of. It
6 doesn't say, there is no promise that we will do
7 one or like 100.

8 Q. Okay.

9 A. It just says that that is one of the
10 options among the whole long list of other items
11 as well.

12 Q. And that is a list of options that
13 all fall within the category of Unified using its
14 best of its abilities to generate deterrence?

15 A. Yes.

16 Q. In fact, Unified has most often
17 chosen the option to file IPRs, right?

18 At least, that is what you have
19 spent most of your money on. Is that fair?

20 A. So, this is my personal feeling is
21 that, after having studied everything and been in
22 this area for a while, IPRs are the most cost
23 effective way for Unified to generate that
24 deterrence.

25 Q. And that is the choice that Unified

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1 has made, though, right?

2 A. Unified has made the choice to file
3 IPRs as its most effective way of generate the
4 deterrence for the zones we work for.

5 Q. Have you ever, has Unified in any
6 way ever communicated to members or potential
7 members that that is what it is determined as
8 being the most effective way to generate
9 deterrence?

10 A. I don't know what you exactly mean
11 by communicated.

12 Q. Well say it at a conference, or in a
13 phone call or one of your meetings with your
14 members, anything like that?

15 A. It is not a secret that Unified
16 believes that filing IPRs is a good way to
17 generate deterrence for the zone we work in.

18 Q. Okay. But I have a specific
19 question for a specific reason which is have you
20 ever communicated that nonsecret to your members?

21 A. It has been a nonsecret since the
22 day we started the company.

23 Q. Have you communicated it to your
24 members?

25 A. I guess I'm, it is not the business

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1 model has been communicated. The idea of
2 challenging patents as part of our business model
3 has been part of Unified's business model from
4 day one.

5 So, like, we are going to file IPRs,
6 it is not the conversation. The conversation is,
7 we are going to generate a deterrence on behalf
8 of the zone.

9 One of the things that is going to
10 be part of that is going to be challenging
11 patents and Unified is going to have the ability
12 to do any, any option we want and one of those
13 options is filing IPRs.

14 Q. So, I appreciate everything you
15 said.

16 But, I don't think you quite
17 answered my question.

18 A. I think I did.

19 Q. Let me try to ask it a different way
20 just because I want to, I didn't mean to have an
21 argument with you about whether you answered my
22 question. Maybe that is a bad way for me to
23 start my question.

24 Let me try to go at it a different
25 way, because, what I'm particularly interested in

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1 is, you have told me today that Unified has
2 figured out the best way to generate deterrence
3 is to file IPRs. Fair?

4 A. Fair.

5 Q. Have you ever told that to any of
6 your members?

7 A. I don't think I have ever had that
8 conversation where I said those exact words to a
9 member, to my recollection.

10 Q. Okay. Let me ask a little bit more
11 of a follow-up because I'm not super interested
12 in having my question be limited to whether you
13 said those exact words.

14 So, specifically, whether or not you
15 used those exact words, please tell me if you or
16 anyone else at Unified has ever communicated to a
17 member that Unified has determined that the best
18 way to go about deterring, or generating
19 deterrence is to file IPRs?

20 A. So, I think I answered this. We
21 don't have the conversation that you are
22 describing. Because that is not how we pitch
23 Unified Patents to say everybody, we determined
24 IPRs are the best way to do it. That is just not
25 the conversation that we have.

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1 of technology areas. And the mechanisms through
2 which we do that are not, we don't tell them that
3 we have decided that IPRs are the best way to
4 create the deterrence. That is just not the way
5 we talk to our members.

6 Q. So, the problem I'm having with your
7 answer and first of all I'm going to object and
8 move to strike as nonresponsive.

9 The problem that I'm having with
10 your answer is because you are talking about what
11 your general policy is and that is not my
12 question. You are talking in general how you
13 talk to members overall. The thrust about what
14 Unified policy is about how it talks to members.
15 That is not my question.

16 I'm going to give it one more try.
17 And I do think that this is a question that
18 fairly calls for a yes or no or I don't know.
19 And then you can give whatever explanation you
20 want. But I would like an answer to my question,
21 and if I don't get one we will take it up for the
22 board.

23 So, my question is, has Unified ever
24 told, ever, like one time, told a member that it
25 has determined that the best strategy for

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1 generating deterrence is filing IPRs?

2 MR. BOWSER: Objection, asked and
3 answered.

4 THE WITNESS: So, I'm going to tell
5 you one more time. I have no recollection of
6 anyone at Unified ever having a conversation
7 with any member about what Unified has
8 decided is the best way to generate
9 deterrence.

10 We have had lots of conversations
11 about how and what we do to create deterrence
12 on behalf of the zone.

13 But, Unified's internal decision-
14 making and what we think is the most
15 effective way or not is, that is not how we,
16 this is just a foreign idea to talk about
17 what we think is like the best way. That is
18 not, we do what we do.

19 Our members know what we do and that
20 has been clear since the very beginning of
21 Unified's founding.

22 BY MR. ANTONELLI:

23 Q. Do you report to any of the members
24 about the IPRs that you have filed?

25 A. We, when we file an IPR we send out

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1 surprised if your e-mail is on it.

2 Q. I think I'm on it.

3 A. So, you probably have received it.
4 And it goes out and it says hey, we invalidated a
5 patent.

6 That is, in terms of like announcing
7 the results of each and every IPR, that's pretty
8 much the extent of our communications with
9 members about, like, a specific IPR.

10 Q. Okay. To be clear, that e-mail that
11 you have just described with 30,000 members, that
12 includes your members?

13 A. It does, yes.

14 Q. And, you mentioned in the summary
15 that you provide to your members at the end of
16 the year that you tell them which IPRs you have
17 filed in the year. Is that correct?

18 A. So, we have like a list of
19 activities. So, it is a chart, just like a, it
20 just lists the name of the entity that we filed
21 an IPR against.

22 Q. So, there is a line entry for each
23 IPR?

24 A. Yes, I mean it is not a, at this
25 point we have grown to a size where the

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1 activities within a zone for a particular year
2 would be [REDACTED] IPRs long possibly for a
3 particular zone.

4 Q. In the annual summary that you
5 provide to your members, do you provide any other
6 information about your IPR activity other than
7 the line entries that you have just described?

8 A. About the IPR activity?

9 Q. Yes, any other information about
10 your IPR activity?

11 A. Well, so, we have how much we spent
12 on each IPR. So, like we, this is a aspect of
13 Unified that we wanted transparency when we
14 founded the company.

15 So, it is interesting data, as lots
16 of companies care about what IPRs cost.

17 Just a benchmark and things like
18 this.

19 Q. Just to be clear, you provide the
20 amount you spent on an IPR per IPR basis?

21 A. Yes.

22 Q. So, at some point you will report to
23 your members that we spent X dollars on the IPR
24 against Fall Line, is that fair?

25 A. It will show up in a list of

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1 everything that is going on in the report.

2 So, everything that is going on in
3 the zone, there will be a list of all of the IPRs
4 and the amount, it is an estimate, guesstimate,
5 at that particular moment in time of what we have
6 kind of spent on an individual IPR as part of one
7 big long list.

8 Q. And what other information do you
9 provide, besides, you mentioned the line item for
10 each IPR that you have filed, the amount of money
11 that you have spent so far on that IPR.

12 What other information do you
13 provide on the IPR on the annual summary reports?

14 A. So, when it comes to the IPR itself,
15 that is basically it.

16 I mean, if we have received a
17 license, it is not really part of the IPR.

18 But, I mean, if we have a license to
19 patents, then, we just have a listing, here are
20 all of the licenses that you have received. And
21 some of those are the result of IPRs, some of
22 them are not.

23 Then there will be, and then there
24 is some like case studies. So, like we take a
25 few IPRs, that, you know, that we like, that tell

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1 Are they allowed to tell you that?
2 Are they prohibited from -- let me ask it a
3 different way?

4 Are your members prohibited from
5 telling you that, either by a contractual
6 provision or by a policy that you have set?

7 A. Yeah, so, I mean I think, there is
8 no contractual aspect of us saying what
9 individuals can and can't tell us.

10 So, what I was referring to is the
11 policy.

12 So, Unified does not have
13 conversations with members about their
14 litigations. So, we would, we would not ask for,
15 they wouldn't tell us about what claims have been
16 asserted, what the, you know, what -- we don't
17 have any conversations about a company's
18 litigation between us and them.

19 We don't expressly tell them, and
20 they know this, that, and everyone knows this,
21 that we are not a law firm. We don't behave like
22 one. We don't represent them. So we do not have
23 an attorney/client relationship with them.

24 And they shouldn't tell us anything
25 about their litigation. We might know stuff

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1 because we have looked at a docket and have saw
2 that a litigation was filed.

3 But we don't get any additional
4 information about litigation from our members,
5 things like which claims were asserted if that is
6 not public then we just simply won't know. We
7 just simply won't know and we won't get that
8 information from our members.

9 Q. Did anybody that Fall Line sued ever
10 tell you what claims were asserted against them?

11 A. Not to my knowledge, no.

12 Q. Well, do you know? Can you answer
13 that question based on your own knowledge?

14 Do you have sufficient knowledge to
15 answer that question yes or no?

16 A. I do. And I know that we didn't
17 have conversations with anyone about Fall Line
18 where someone told us what claims were asserted.

19 Q. I want to make sure that my question
20 is crystal clear, because I'm not talking about
21 just the current Fall Line litigations. I'm mean
22 anybody that Fall Line has sued.

23 Your testimony is that no one that
24 Fall Line has ever sued has told you what claims
25 were being asserted? I want to make sure that is

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1 clear.

2 A. I have no knowledge that anyone at
3 Unified has ever had a conversation with anyone
4 where we were told which claims were asserted
5 against anyone.

6 Q. Okay. And so this time your answer
7 was phrased as you have no knowledge of that.

8 I mean, are you in a position, are
9 you in a knowledgeable enough position to answer
10 that question yes or no?

11 A. So, I'm a little bit confused. I
12 mean, like --

13 Q. I think it happened --

14 MR. BOWSER: Objection.

15 BY MR. ANTONELLI:

16 Q. -- so that is why I am asking the
17 question. I think one of the defendants we sued
18 has reported to Unified specifics about what
19 patents are being asserted, what claims are being
20 asserted.

21 And so I want to know whether you
22 are testifying, under, under oath today that that
23 did not happen?

24 MR. BOWSER: Objection.

25 THE WITNESS: I have no knowledge of

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1 that. And, I know the people who would have
2 had conversations, I have talked to them
3 about all of our cases, and, this, this is
4 something that we don't talk to any of our
5 members about.

6 So, we would not be getting
7 information from anyone about which claims
8 were asserted in the litigation.

9 BY MR. ANTONELLI:

10 Q. Okay. So you are denying that today
11 under oath. Is that fair?

12 A. I'm what?

13 Q. You are denying it under oath today.

14 A. Yes, I'm denying it under oath
15 today.

16 MR. BOWSER: Excuse me, we have been
17 going for about an hour.

18 MR. ANTONELLI: Sure, do you want a
19 break sure.

20 (Recess taken -- 9:54 a.m.)

21 (After recess -- 10:01 a.m.)

22 BY MR. ANTONELLI:

23 Q. I want to go back to the questions I
24 was asking about under the contract where you
25 mentioned one thing is that Unified is required

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1 is an obligation in the agreement.

2 Q. Do your contracts with your members
3 obligate Unified to spend a certain percentage of
4 the money that they receive on deterrence
5 activities?

6 A. No.

7 Q. Do they require Unified Patents to
8 spend any particular amount of money on deterrence
9 activities?

10 A. No.

11 Q. So, if you wanted to, you can take
12 all of that revenue and buy Ferraris with it?

13 A. I could.

14 Q. If you did buy Ferraris in a given
15 year, you probably wouldn't get a bunch of
16 members to sign up again, would you?

17 A. I don't know. They might think I'm
18 pretty cool, but...

19 Q. Okay. Do you report any sort of
20 metric, do you have any metrics that you use in
21 your reporting to your members about your
22 deterrence activities?

23 A. I don't think so. I don't know
24 what, do you have an idea?

25 Q. Number of IPRs filed, percentage

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1 A. No.

2 Q. What does Unified typically spend on
3 an IPR?

4 A. I don't know what an average cost
5 for it is. Ones that go the distance are more
6 expensive; it depends on the counsel on the other
7 side. Some counsels are easy to work with and
8 some counsels are not.

9 The, some IPRs settle so those don't
10 go the distance.

11 Some of our counsel are less
12 expensive than others. So, it really is kind of
13 all over the place.

14 Q. So, let me go back to the things
15 that you promised to your members in your
16 contracts.

17 So we talked about you promised to
18 engage in general deterrence, and your promise to
19 provide annual reports with various information
20 in it.

21 Is there anything else that you
22 promise to your members in the contracts? And
23 I'm fine with you focusing kind of on business
24 terms.

25 A. The agreement works like there is a

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1 master agreement that says Unified is a, like,
2 here is what every member signs up for.
3 And, in here we say for the zones
4 that you subscribe, we are going to use, what is
5 the contract term, [REDACTED],
6 whatever, to, you know, reduce MPE activity in a
7 zone.

8 And, then, you know, some of the
9 things we may do are the following in order to
10 achieve that.

11 And then we say at the end, you
12 know, we will give you the data and everything we
13 generate from this. We will give you things like
14 the cost of IPRs. There is a whole bunch of
15 other requirements in there too, just to say we
16 will generate reports about MPE activity.

17 We meet all of those obligations by
18 sending out, like, you know, mass reports. So,
19 like at the end of every year we do an end of the
20 year MPE litigation report. I'm sure you got the
21 e-mail; you probably saw it.

22 That would be one of the ways we
23 meet some of those obligations which is just to
24 like give people data about what we know about
25 MPE activity.

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1 And so we meet those and then so
2 that is, that is everything that we are going to,
3 like, do for a zone.

4 And then we have a subscription form
5 that is attached to each master agreement as an
6 exhibit. And, if you are going to sign up for
7 one zone content, then you sign the content
8 subscription form.

9 If you sign up to automotive, you
10 sign the automotive subscription zone.

11 And those have a definition in them
12 that says, defined zone that Unified is providing
13 that is going to be subscribed by a member is
14 defined like this.

15 And, everyone signs those exhibits
16 so that everyone, and those are the ones that
17 say, like, you know, how much everyone pays and
18 everything like that.

19 Because the master agreement,
20 everyone signs and then individual companies sign
21 to individual zones by executing the exhibits for
22 those zones.

23 Q. So, let me go back to the question I
24 asked in maybe kind of a comical way about could
25 you blow all of the revenues on Ferraris for the

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1 team.

2 And your answer was yes you could do

3 that. But, how do you square that with the

4 contracts requirement that you use [REDACTED]

5 [REDACTED] to engage in a general

6 deterrence?

7 A. So, I was clearly joking referring

8 to the Ferraris, being able to spend there.

9 Listen, I mean the contract says we

10 are going to use [REDACTED].

11 And so, whatever is in the list, I
12 mean, you know, in that list is any other
13 activities we think is appropriate which is what
14 I'm saying.

15 Like, we are not obligated to do any
16 of those things.

17 Q. Right.

18 A. But we are hired to do deterrence
19 for a zone and we believe that we meet those
20 obligations and we do so on an annual basis.

21 Q. Right. And so I mean my question
22 was serious, even though I use a funny example.

23 The truth is you can't take the
24 revenue and spend it all on Ferraris, right?

25 A. I think if I was to do, I mean I'm

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1 Q. Those are individual negotiations?

2 A. [REDACTED]

3 Q. Those are individual negotiations?

4 A. [REDACTED]

5 Q. So, [REDACTED]?

6 A. [REDACTED]

7 [REDACTED]

8 Q. Well that was for one zone. A
9 certain range. And then, but that applies to
10 every zone?

11 A. [REDACTED]

12 [REDACTED]

13 Q. [REDACTED]

14 A. We give you a discount for, a
15 multiple zone discount.

16 Q. Okay. What is the typical zone
17 discount?

18 A. [REDACTED] I think for multiple
19 zone discount. It is way more than that if,
20 basically [REDACTED] if they signed up for
21 everything would be I don't know, [REDACTED] or [REDACTED]
22 something like that.

23 This is basically what we have done,
24 if you want to get into all of them, it is about
25 [REDACTED] zones to participate.

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1 That is the, if you pay for [REDACTED]
2 [REDACTED], whatever, then you get to get into
3 [REDACTED].

4 Q. It seems like [REDACTED] are
5 paying roughly for [REDACTED], right?
6 Roughly?

7 A. Well, so, our, the equation is [REDACTED]
8 [REDACTED]
9 [REDACTED]. So, the top rate used to be [REDACTED] when we
10 first started out.

11 So, it is [REDACTED]
12 [REDACTED] signed their agreements.

13 Q. Do you have members that have
14 committed to more than one year?

15 A. No, not in our MPE zones.

16 So, in our MPE zones, which is what
17 we are talking about right now, those are one
18 year agreements.

19 I think we, I think back in the day
20 I think we did a [REDACTED] way back in the
21 day that might have been a [REDACTED].
22 But that was like four or five years ago.
23 Anyway, they are no longer a member, so...

24 Q. You mentioned [REDACTED] it reminded me
25 of a question that I wanted to ask.

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1 When you have a member sign up, or
2 when you have somebody who is a member, will you
3 ever attack one of their patents? Challenge one
4 of their patents?

5 A. So, if a member was an MPE and they
6 still joined up, then possibly, yes. I mean, we
7 are here to deter MPE activity.

8 Everything that we do, what we ask
9 people to do is, you know, is we are hired to do
10 deterrence work against MPE activity.

11 So, that is, it doesn't make sense
12 to ask are we going to go after a company's
13 patents. Because our members are not MPEs.

14 Q. Okay. It sort of depends exactly
15 how you define an MPE, and at least Li Chang used
16 to talk about corporate MPEs, but...

17 But, so, let me just try to put a
18 point on this: Has Unified ever challenged a
19 patent of one of its members?

20 A. So, in the context of them owning
21 that patent, no.

22 But, I think there are situations
23 where they have sold patents to others, and I
24 think we have challenged patents that were
25 originally owned by companies that have been

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1 Q. Okay. Does Unified have any written
2 policies about what information it will receive
3 or accept from its members?

4 A. We do not have a written policy
5 about what information we -- I think you said
6 won't accept from our members. Or will. We do
7 not have a written policy about that.

8 Q. Okay. Let's talk about licenses.
9 Unified Patents obtains licenses on behalf of its
10 members. Is that correct?

11 A. That is incorrect.

12 Q. What is incorrect about that?

13 A. We don't do anything on behalf of
14 our members. We work on behalf of the zones that
15 we work for.

16 Q. Well don't you obtain licenses that
17 protect your members?

18 A. We obtain licenses and we work on
19 behalf of zones.

20 Members do get licenses when we
21 settle, but we don't do it on their behalf.

22 Q. So, who else benefits besides the
23 members that have subscribed to the zone?

24 A. We think everyone benefits when
25 Unified settles an IPR.

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1 negotiations.

2 So, the deal is exclusively between
3 the MPE and Unified Patents.

4 Q. Okay. So for all of those reasons
5 when you do a deal, when you settle an IPR, you
6 enter into a license agreement where the licensee
7 is Unified; is that correct?

8 A. Yes. We are the recipient of the
9 license.

10 Q. Okay. Now I'm going to move on to
11 my next question.

12 When you do a deal where you settle
13 on an IPR and you get a license agreement where
14 Unified is the licensee, do you [REDACTED]

15 [REDACTED]

16 A. We do. As I explained, [REDACTED]

17 [REDACTED]

18 Q. And what [REDACTED]

19 [REDACTED] do you get?

20 A. We get the [REDACTED]

21 [REDACTED] that we negotiated.

22 Q. To who?

23 A. To the members or zones that we put
24 on the list.

25 Q. So, the actual agreement will [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 A. It will explicitly [REDACTED]

4 [REDACTED] I mean if it is

5 an [REDACTED], right, then it might be

6 for [REDACTED] or for all of the [REDACTED]

7 [REDACTED].

8 And we would put the list of members

9 who [REDACTED]

10 [REDACTED]

11 This is everyone from our paying

12 members and our nonpaying members, it is

13 everyone.

14 Q. Well, it is not everyone. It is

15 only members, right?

16 A. The people that [REDACTED]

17 [REDACTED] would be only members.

18 Q. And when Unified receives [REDACTED]

19 [REDACTED], Unified of course

20 [REDACTED], correct?

21 A. It, yeah, I mean if we settle an IPR

22 and [REDACTED]

23 [REDACTED] and we would send out a

24 mass e-mail that said we have settled this IPR.

25 That would be the first that anyone learned of it.

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1 Q. Do you actually grant [REDACTED]

2 [REDACTED]

3 A. I mean, it, it [REDACTED]

4 [REDACTED]. [REDACTED]

5 [REDACTED].

6 Q. So, [REDACTED]

7 [REDACTED] do those [REDACTED]

8 purport to [REDACTED] by virtue of

9 the [REDACTED]? Or do they contemplate

10 that you have to [REDACTED]?

11 A. The [REDACTED] is the [REDACTED]

12 [REDACTED] and they [REDACTED]

13 [REDACTED]

14 Q. Okay. And then you don't have to

15 take any further action after that point?

16 A. No.

17 Q. Because your [REDACTED]

18 says anything that [REDACTED] and we

19 have [REDACTED], that

20 would [REDACTED]?

21 A. That is correct.

22 Q. So, that is another thing that you

23 have promised to do in your [REDACTED]

24 with your members is to [REDACTED]

25 [REDACTED]?

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1 know. If you don't want a copy of it, that is
2 it.

3 If they ask for a copy, we give them
4 a copy.

5 Q. When you say we will give them a
6 copy, do you mean you will provide them with an
7 [REDACTED]?

8 A. Yes.

9 Q. And, when you say you summarize the
10 [REDACTED] in your annual report, what
11 information do you provide in those summaries?

12 A. The summary is a list which includes
13 the [REDACTED], the [REDACTED]
14 [REDACTED] the [REDACTED]
15 [REDACTED], and just like a technology, like
16 high level technology description of the,
17 whatever [REDACTED].

18 Q. Does the -- well, strike that.

19 Do you provide information to your
20 members [REDACTED] in any other way besides
21 the annual report you described and the e-mail
22 that you described?

23 A. No.

24 Q. How many licenses have you obtained?

25 A. Since the beginning?

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1 Q. Sure.

2 A. I don't know. Couple dozen.

3 Q. How many in 2017?

4 A. Maybe 13 to 15.

5 Q. Of the licenses you received, how
6 many of them were ones for which you had filed an
7 IPR?

8 A. I think, going at it the other
9 direction, I think we have done about [REDACTED]
10 [REDACTED] where we had not filed an IPR. And
11 the rest would have been through settling IPRs.

12 Q. In the [REDACTED] you got where
13 you did not file an IPR, did you tell the MPE
14 that you would file an IPR?

15 A. So, it is not that easy. Many of
16 the companies that we have filed IPRs against
17 have asked us to call them in advance of filing
18 an IPR.

19 And so, if, in those we have honored
20 their request to say it may be before we even get
21 started, hey we have looked at this, we believe
22 it is in our zone. You have asked us to give you
23 a call. We are doing that.

24 Some of those relationships are, you
25 know, better than others and so, you know, we

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1 going to object on the grounds that it is
2 nonresponsive?

3 MR. BOWSER: And I'm going to
4 object.

5 MR. ANTONELLI: What is your
6 objection.

7 MR. BOWSER: That he was answering
8 your question.

9 MR. ANTONELLI: That is not really
10 an objection.

11 MR. BOWSER: I'm objecting to your
12 objection.

13 MR. ANTONELLI: That is not
14 something that is contemplated by any rule of
15 procedure. So, it is what it amounts to is a
16 speaking objection, it is not allowed.

17 All right, do you guys want to take
18 another break or do you want to keep going.

19 THE WITNESS: I will take another
20 break.

21 (Recess taken -- 11:07 a.m.)

22 (After recess -- 11:13 a.m.)

23 BY MR. ANTONELLI:

24 Q. What does Unified do to try to
25 convince its members to resubscribe, to re-up?

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1 A. So, on an annual basis, we send our
2 members what we talked about as the annual
3 report.

4 And, we have a meeting that says
5 this is what we did the last year as all of our
6 deterrence work; this is what we are doing in a
7 particular zone.

8 And as I kind of described it
9 earlier, like, we work on behalf of the zone, we
10 give all of the information and we just say
11 basically, you know, like, here is what we did
12 for the zone, if you like the work we do on
13 behalf of the zone, then pay us again, renew, and
14 we are going to work on behalf of the zone for
15 another year.

16 So, that is, that is our pitch.

17 Q. Is there anything else Unified does
18 to try to convince its members to resubscribe
19 each year?

20 A. That is our process. We have a
21 meeting and we go through the zone activity.

22 Q. I don't think we have really talked
23 about this meeting that you referred to.

24 Is that an annual meeting?

25 A. Yes.

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1 Q. Is that an annual meeting with each
2 member or with all of the members?

3 A. Each member.

4 Q. Who meets with each member annually?

5 A. I do.

6 Q. Anyone else?

7 A. Christine would set the meeting up
8 in terms of scheduling it.

9 Shawn is sometimes, may be there.
10 But, I am the one who runs all of the renewal
11 meetings.

12 Q. Where do the renewal meetings take
13 place?

14 A. Over the phone.

15 Q. How long do they last?

16 A. Usually an hour.

17 Q. And what do you talk about in that
18 hour?

19 A. The annual report that I described
20 is presented.

21 Q. You don't just read it to them, do
22 you?

23 A. I go through it. I mean, it is like
24 a PowerPoint presentation. As I described annual
25 report is in PowerPoint form.

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1 Q. And what else do you talk about
2 besides what is already written in the annual
3 report?

4 A. MPE activity. Knowledge about
5 industry information of what is going on from a
6 legislative perspective.

7 You know, any other kind of like
8 zone information might be part of a discussion,
9 but it is basically present the annual report and
10 if you like what we have done, we would love to
11 see you renew.

12 Q. Are those phone calls recorded?

13 A. No.

14 Q. Who participates on behalf of the
15 member in those meetings?

16 A. It would depend on the company.

17 Q. Is it typically a lot of people, one
18 person, a couple of people?

19 A. I would say the vast majority of
20 them are one person. But, there are, there
21 certainly have been meetings where there have
22 been, you know, one or two people on, it is
23 certainly not like a big, it is not a big
24 meeting.

25 Q. Do you take notes during those phone

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1 and they have told me we don't have [REDACTED]

2 [REDACTED]

3 And they don't renew.

4 Q. Any other concerns people have ever
5 expressed to you besides not [REDACTED]?

6 A. Not off the top of my head.

7 Q. Have you ever sent an e-mail
8 describing what happened during one of these
9 meetings after the meeting happened?

10 A. What do you mean? To somebody?

11 Q. Sending an e-mail. Have you ever
12 sent an e-mail that describes what happened in
13 one of these meetings? Like after the meeting
14 happened?

15 A. I don't think so.

16 Q. During these meetings, do you try to
17 emphasize to your members that you are delivering
18 value for them and that is one of the reasons why
19 you should renew?

20 A. During these meetings I definitely
21 emphasize that I think we are doing great work on
22 behalf of the zone.

23 And that we ask them to sign up
24 again so that we can continue to work on behalf
25 of the zone that that member is participating in.

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1 A. Yes. That is a yes. I am
2 definitely presenting that presentation in its
3 entirety.

4 Q. Do you present to your members
5 during these annual phone calls where you are
6 trying to convince them that they should
7 resubscribe, do you talk to them about the number
8 of IPRs you have filed for a zone?

9 A. I guess I'm finding these questions
10 redundant. The presentation, annual report we
11 talked about, has a list of all of the IPRs that
12 we have filed in the zone.

13 And therefore, inherently it
14 includes what you have just asked, which is a
15 list of the IPRs that we have designated as being
16 in the zone that we are discussing on the phone.

17 Q. So, does that mean then inherently
18 your answer is yes?

19 A. Yeah, I mean I think that we
20 definitely present the IPRs that were filed in
21 the zone.

22 Q. Okay. During the meetings that you
23 have with members where you are trying to
24 convince them to resubscribe, do you discuss the
25 amount of money that you have spent on filing

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1 your zone?

2 A. Well because we are not, again we
3 are not doing work on behalf of members. Like,
4 this is not, we can't get a company out of
5 litigation. Like, we are not settling to get a
6 company out of litigation.

7 So, we are not saying hey, license
8 this company, but not this one. We don't, we
9 don't make it like on behalf of any one company.

10 We just make it the members. That
11 way you have, we are not working on behalf of any
12 one.

13 Q. My question is why members versus
14 nonmembers? You could choose a subset of
15 nonmembers and just say give us the right to
16 license 50 random companies instead of our 50
17 members. Why didn't you do that.

18 A. Well it is possible. But we decided
19 to make it members.

20 Q. Why? Why did you make that
21 decision?

22 A. Because we are working on behalf of
23 the zones.

24 I mean, everyone ultimately gets a
25 benefit by the way. We claim that even, even

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1 nonmembers get a benefit when we settle a license
2 to settle an IPR on the patent.

3 Everyone ultimately. This patent
4 ends up having a patent owner give us a license
5 for free. That means that the value of that
6 patent can't be some astronomically high number
7 for the value of the technology covered by that
8 patent.

9 So, we think everyone benefits.
10 But --

11 Q. I'm still confused why you had to
12 set up this member structure.

13 Because you could have just said
14 give me a sublicense to any 50 random companies.
15 Why did you need to do it only behalf of members?

16 A. You expect me to grant, pick random
17 companies every single time I do a deal. That
18 seems like a whole lot of additional effort.

19 Q. Why not say I'm going to sublicense
20 50 people. Why did you choose to make the line
21 members?

22 A. It was, that was the line we drew.
23 I mean.

24 Q. But why? What was special about
25 them? How did you identify them to be the ones

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1 activity.

2 I think we do all of those things
3 and we think that all of those things have an
4 impact.

5 Exactly which impact has the
6 greatest impact or the greatest deterrent impact
7 at any given moment, I'm not sure.

8 But, IPR activities are just, they
9 are expensive.

10 So, they make up the most expensive
11 aspect of what we do.

12 Q. That is what you spend most of your
13 money on, right?

14 A. We spend most of our money on IPR
15 activity.

16 Q. And it is what you spend most of
17 your time on as well.

18 A. Whose time?

19 Q. Unified's time.

20 A. I think that would depend on which
21 employees we are kind of talking about.

22 But --

23 Q. Overall.

24 A. In terms of employees, I think there
25 are as many employees that spend their time on

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1 other things besides IPRs, than, as we do people
2 who are dedicated exclusively to IPRs.

3 Q. The next sentence says, "Unified
4 members do not pay any fees designated for IPRs."
5 Do you see that?

6 A. Unified's members do not pay any --
7 that is, yes, I see that.

8 Q. Did I read that correctly?

9 A. I believe you read it off the page.

10 Q. I'm sorry, I didn't understand your
11 answer.

12 A. You read the words that are on the
13 page.

14 Q. So I read it correctly?

15 A. I guess so, yes.

16 Q. I only pause because I thought it
17 might have been a mistake based on your original
18 answer. I just want be clear I got the record
19 correct. So let me read it again. "Unified's
20 members do not pay any fees designated for IPRs."
21 That is what it says, right?

22 A. That is what it says.

23 Q. Okay. But, the money that is used
24 to file for the IPRs and to pay for the outside
25 counsel, that comes from Unified's members,

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1 wants. But he is not answering my question.

2 I mean I think at one point he said
3 he thought that the answer was no.

4 MR. BOWSER: Are we on the record
5 still, or --

6 MR. ANTONELLI: Yes, we are on the
7 record.

8 THE WITNESS: I think what I said
9 was that if you forced me into a yes or no
10 answer without allowing me to describe the
11 nuances of an answer, that you would be
12 forcing me into the possibly answering with a
13 no when the answer is obviously more nuanced
14 than that.

15 And I am trying to be appreciative
16 of the fact that the answer needs to be
17 nuanced in order to get it accurate.

18 BY MR. ANTONELLI:

19 Q. Let me ask this question just to
20 make sure this isn't the problem.

21 So, is the following proposition
22 true or false: When Unified files an IPR for a
23 patent in a given zone, the money that it uses,
24 that it spends on outside counsel and for the
25 filing fee for that IPR comes from members who

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1 have paid Unified Patent's subscription fees for
2 that zone?

3 A. Yeah, I think that is accurate. The
4 membership fees for a particular zone, fund zone.
5 Zone uses that money to file an IPR.

6 MR. ANTONELLI: I pass the witness.

7 MR. BOWSER: I have no further
8 questions.

9 (Whereupon, signature having been waived,
10 the deposition concluded at 1:04 p.m.)

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